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PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the application of:

Ervin Goldfain, et al.

Ser. No.: 09/862,636

Filed: May 22, 2001

For: **EYE VIEWING DEVICE COMPRISING EYEPIECE AND VIDEO
CAPTURE OPTICS**

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November 2, 2001
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Docket No.: 281-329.02
TC 3700 MAIL ROOM
Art Unit: 2873

Examiner: Not Assigned

Box RCE
Assistant Commissioner for Patents
Washington, DC 20231

I hereby certify that this correspondence is being deposited
with the United States Postal Service as first class mail
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Washington D.C. 20231, on November 2, 2001.

Tammy S. Senecal
Tammy S. Senecal

**REQUEST TO RESCIND PREVIOUS NONPUBLICATION REQUEST
35 U.S.C. 122(b)(2)(B)(ii)**

Sir:

Applicants hereby rescind the previous request that the above-identified application not be published under 35 U.S.C. 122(b). Applicants had filed a Request for Nonpublication in this application, in part, because the phrase "the invention disclosed" under Rule 37 CFR § 1.213 had been interpreted by applicants' attorney to refer to the claimed invention or the newly disclosed patentable subject matter (based on the meaning of the term "invention" as interpreted under international law). However, as part of their effort to maintain the strictest standards of candor and equitable conduct before the USPTO applicants have investigated developments relating to 35 U.S.C. § 122(b) and have found that more expansive possible interpretations of the phrase "invention disclosed" have recently been proposed by members of the patent bar and by staff at the Legal Division of the USPTO.

Examining the disclosure of the present application and the previously filed PCT/US99/727857 application, filed November 23, 1999, in view of more expansive possible constructions of "the invention disclosed" under 35 U.S.C. § 122(b), applicants now believe that PCT/US/99/727857 could or might possibly qualify as a prior International filing under 35 U.S.C. § 122(b)(B)(iii) if the term "the invention disclosed" were given an extremely broad judicial interpretation.

In addition, applicants filed an International application concurrently with the present application (PCT/US01/16557, filed May 22, 2001). On the contingency that the concurrently filed International Publication is argued to constitute a "subsequently filed" application under 35 U.S.C. § 122(b)(B)(iii), this request will constitute notice of foreign filing under 35 U.S.C. 122(b)(f)(iii). Because this contingent notice is filed more than 45 days after the filing of the International application, applicants have contingently and concurrently filed with the Board of Petitions a petition for submission of Notice of Foreign Filing under 35 U.S.C. § 122(b)(B)(iii).

The Commissioner is hereby authorized to charge any additional fees associated with this communication or credit any overpayment to Deposit Account No. 50-0289.

Respectfully submitted,

WALL MARJAMA & BILINSKI, LLP

Date: November 2, 2001

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